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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

MAY 9 - 2002

ALLFIRST BANK,

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Plaintiff,

*

MARY E. D'ANDREA CLERK

Per SJS
Deputy Clerk

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Civil Action No. 1:01-CV-786

JOHN M. ORTENZIO,

*

Defendant.

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**PLAINTIFF'S MOTION IN LIMINE WITH RESPECT TO THE
TESTIMONY OF THE DEFENDANT'S EXPERT WITNESS, DONALD C. FRUEH**


Plaintiff, Allfirst Bank ("Allfirst"), by its undersigned attorneys, files this Motion in Limine with respect to the testimony of Donald C. Frueh, an expert witness designated to testify at trial by Defendant, John M. Ortenzio ("Ortenzio"). The grounds for this Motion are as follows:

1. Ortenzio has designated Donald C. Frueh, a consultant and former bank officer, to testify as an expert witness at trial. Mr. Frueh intends to testify at trial that repayment of the \$1.2 Million loan that Allfirst extended to CCI Construction Company, Inc. ("CCI"), which was personally guaranteed by Ortenzio, with funds drawn from a separate \$4 Million unguaranteed line of credit that Allfirst extended to CCI did not violate any terms or provisions of the loan documents evidencing the two credit facilities.

2. Mr. Frueh's testimony would violate the well-settled rule that expert opinion testimony regarding the legal effect of a written agreement is not admissible. The interpretation of the clear and unambiguous language of the loan documents is a legal issue for the Court. Because Mr. Frueh's proposed testimony will not "assist the [Court] to understand the evidence or to

determine a fact in issue" within the meaning of Rule 702 of the *Federal Rules of Evidence*, Ortenzio should be precluded from calling Mr. Frueh as an expert witness at trial.

WHEREFORE, Plaintiff, Allfirst Bank, respectfully requests that this Honorable Court enter an Order precluding Defendant, John M. Ortenzio, from calling Donald C. Frueh as an expert witness at trial.


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Attorneys for Plaintiff, Allfirst Bank

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8 day of May, 2002, a copy of the foregoing Plaintiff's Motion in Limine With Respect to the Testimony of the Defendant's Expert Witness, Donald C. Frueh was mailed by first class mail, postage prepaid, to: Edward I. Swichar, Esquire, Blank Rome Comisky & McCauley LLP, One Logan Square, Philadelphia, Pennsylvania 19103-6998, attorneys for Defendant.


Lawrence J. Gebhardt